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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,639	01/04/2002	Ronald J. Scherer	3616.213US01	9187
23552	7590	08-16/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HECKENBERG JR, DONALD H	
			ART UNIT	PAPER NUMBER
			1722	
DATE MAILED: 08/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/038,639

Applicant(s)

SCHERER ET AL.

Examiner

Donald Heckenberg

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached pages.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

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1. Applicants' arguments filed July 28, 2004 have been fully considered but they are not persuasive.

Applicants assert that DE '390 does not anticipate claim 24 of the instant application. Specifically, Applicants argue DE '390 does not have a flat surface that closes the entire bottom of the mold cavity as recited in claim 24.

Applicants' argument is not commensurate with the claim language. Claims 24 recites:

"an undercut adjacent the open bottom of the mold cavity that, along with a flat surface of a pallet that closes the entire open bottom of the mold cavity, defines a flange-forming subcavity of the mold cavity configured to form the flange of the block."

The plain language of this phrase can reasonably be construed as requiring the mold assembly have two properties: (1) that the mold comprise a pallet that closes the entire bottom of the mold cavity, and (2) that the pallet has a flat surface that along with undercut defines the flange-forming subcavity. However, this language does not necessarily require that the flat surface of the pallet have the additional property of closing the entire bottom of the mold cavity.

DE '390 anticipates this claim language. Specifically, DE '390 discloses a pallet (50) that closes the entire bottom of the mold cavity (see fig. 3). The pallet further has a flat

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surface that along with the undercut, defines the flange-forming subcavity (43).

Applicants' also assert that the combination of DE '499 and Hedrick do not suggest an apparatus as defined in claim 36 of the instant application. Specifically Applicants note that the part of DE '499's contour plate that forms an undercut does not extend across the entire distance of the mold cavity between the two opposed side walls, and Applicants argue that there is no suggestion for modifying the reference absent impermissible hindsight. Applicants further argue that DE '499 teaches away from such a modification in describing a significant advantage of the disclosed structure be that only the part of the contour plate serve to produce the undercut need be moved out of the cavity for the formed block to be removed from the mold (citing the of record translation of DE '499 at p. 4, ll. 14-20).

As described in the previous Office Action, DE '499 notes that the converging portion is designed to form an undercut portion in the block molded in the assembly, and notes the shape of the converging portion in turn forms the shape of the undercut in the block (see for example, translation p. 9, ll. 13-14 noting that the converging portion 4 forms a triangular undercut). DE '499 is thus clearly relating the converging portion to the ultimate shape produced in the block. Therefore,

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it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the assembly disclosed in DE '499 as such to have the converging portion extended across the entire mold cavity to the opposing side walls because this in turn would have created an undercut extending fully across the block (as desired to form certain shaped blocks) given the correlation of side portion to block shape in DE '499. Thus, there is ample suggestion within the reference itself for such a modification as to render the claim obvious to one of ordinary skill in the art.

The advantage argued by Applicants as teaching way from the proposed modification of the reference is described as:

"One significant advantage of the device according to the invention can be seen in the fact that it is no longer necessary to move the entire contour plate away from the mold cavity in order to remove the block from the mold. According to the invention, only the part of the contour plate that serves to produce the undercut in the cast concrete block needs to be moved out the cavity that represents the undercut."

(translation, p. 4, ll. 14-18, emphasis added).

DE '499 defines the "contour plate" to include both the part forming the undercut (4) as well as the plate (3) above the undercut (see fig. 10 and translation, p. 8, ll. 9-11). Thus, even after the modification of DE '499 to have the undercut forming plate extend across the entire distance of the mold

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cavity, the apparatus would have this advantage noted by DE '499. The portion of the contour plate (3) not forming the undercut would still not have to be moved to remove the formed block. Rather, only the portion forming the undercut (4), while spanning the entire distance of the mold cavity, would have to be moved.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system,

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see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

 8-11-04
Donald Heckenberg
A.U. 1722


ROBERT DAVIS
PRIMARY EXAMINER
GROUP ~~1300~~ 1722

8/12/04